

Texas
Department
of Human Services

1D# 13190
mj

INTERIM
COMMISSIONER
Burton F. Raiford

August 1, 1991

RO-143

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The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711

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Opinion Committee

RE: Request for Opinion

Dear General Morales:

The Texas Department of Human Services (DHS) is required by Chapter 48 of the Human Resources Code to investigate reports of abuse, exploitation or neglect of elderly or disabled persons that are not alleged to have occurred in a facility operated, licensed, certified or registered by another agency. As part of its investigation, DHS is required to determine whether the person needs protective services from DHS. Protective services as defined in Section 48.002, Human Resources Code, include social casework, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care and other services consistent with Chapter 48.

DHS, in providing the protective services authorized by Chapter 48, may attempt to obtain a guardian for an elderly or disabled person who has been determined to be in a state of abuse, neglect or exploitation and who requires the protection of a guardian to ensure his safety. While the court will not customarily appoint DHS as a temporary guardian, appointment of DHS as a temporary guardian may be made as a last resort. See Probate Code Sections 130(i) and 130I(b).

As part of a pilot project being conducted in one region of the state, DHS itself has been applying to have particular DHS employees appointed guardian of adult protective services clients who are in need of a guardian and have no one available to assume that role. Recently, a county judge insisted that a personal bond be posted in several of these guardianship cases. This will, we fear, greatly impair our ability to protect such individuals.

While there appears to be no specific statutory authority for the proposition that the State is not required to post a bond when it or its employee is appointed guardian of an individual, the State is exempted by statute from the requirement of posting bond in certain

The Honorable Dan Morales

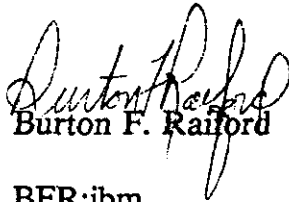
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other civil cases. For example, the State of Texas or its department is not required to file a bond for court costs incident to a suit filed by the entity or for an appeal or writ of error taken out by the entity and is not required to give a surety for the issuance of a bond to take out a writ of attachment, writ of sequestration, distress warrant or writ of garnishment in a civil suit. Civil Practice and Remedies Code Section 6.001 (Vernon 1986).

The Department of Human Services respectfully requests the Attorney General's opinion on whether or not the Department of Human Services or its employees may be requested to post a bond when appointed as a guardian for an adult protective services client.

Sincerely,


Burton F. Raiford

BFR:jbm